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(Rev. 8/83)

FILED  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

# United States Bankruptcy Court

APR 12 1989

IN RE: For the NORTHERN District of IOWA

KROLL FARMS, A Partnership  
Debtor.

Chapter 12 BARBARA A. EVERLY, CLERK

Case No. L-87-00773S

KROLL FARMS, A Partnership  
v.

Plaintiff

FARMERS HOME ADMINISTRATION

Defendant

Adversary Proceeding No. A-88-0036S

## JUDGMENT

This proceeding having come on for trial or hearing before the court, the Honorable Michael J. Melloy, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

[OR]

The issues of this proceeding having been duly considered by the Honorable Michael J. Melloy, United States Bankruptcy Judge, and a decision having been reached without trial or hearing,

IT IS ORDERED AND ADJUDGED: that the 1985 cash deficiency payment in the sum of \$613.42 is held by the Debtor free and clear of any Farmers Home Administration lien or encumbrance.

IT IS FURTHER ORDERED that the 1986 deficiency payment in the sum of \$2,369.85 is held by the Debtor subject to a valid lien of Farmers Home Administration.

IT IS FURTHER ORDERED that pursuant to the stipulation between the Debtor and the Farmers Home Administration, the "PIK certificate" held by the Debtor in the sum of \$2,476.32 is free and clear of any lien or encumbrance of Farmers Home Administration.

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BARBARA A. EVERLY

Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]

Date of issuance: April 12, 1989

By: Patricia M. Swiger  
Deputy Clerk

proceeds of those crops were placed in a supervised bank account under the joint control of the Debtor and FmHA.

It is the understanding of the Court that the supervised account is under the joint control of the Debtor and FmHA. Monies can be released from the supervised account only by a check signed by both the Debtor and an FmHA official. Use of such an account gave FmHA control over the use of the funds so that the funds would be used only for the purposes of allowable farm expenses.

5. Rather than apply the crop proceeds to repayment of the outstanding indebtedness owed to FmHA, the FmHA allowed the Debtor to use the monies deposited into the supervised account to plant and harvest the 1985 and 1986 crops.

6. When the complaint was originally filed by the Debtor, there were three government deficiency programs payments in dispute. Those payments are identified as follows:

a. The Debtor has received a check from the Commodity Credit Corporation ("CCC") in the amount of \$613.42 for a deficiency payment on the 1985 soybean crop.

b. The Debtor has received a check from the CCC in the amount of \$2,369.85 for a deficiency payment on the 1986 corn crop.

c. The Debtor also received a commodity certificate in the amount of \$2,476.32. This certificate is of a type commonly referred to as a "PIK Certificate." Subsequent to the submission of this matter to the Court, the Court has been advised that FmHA

been attached to Plaintiff's complaint as Exhibit "A". Copies of all relevant promissory notes, security agreements, financing statements and other exhibits are attached to Plaintiff's complaint and have been submitted by stipulation. References in these Findings of Fact to exhibits refer to the exhibits attached to Plaintiff's complaint. The notes are in the following amounts and were executed on the following dates:

\$ 56,150.00 dated July 6, 1978

\$222,000.00 dated July 6, 1978

\$ 37,000.00 dated May 21, 1984

2. The Debtor signed Security Agreements dated June 20, 1983, marked Exhibit "B", dated May 21, 1984, marked Exhibit "C", August 22, 1985, marked Exhibit "D", and September 17, 1986, marked Exhibit "E".

3. These Security Agreements were perfected by the filing of Financing Statements and Continuation Statements, marked Exhibit "F".

4. No new proceeds have been loaned by FmHA to the Debtor since May 21, 1984. FmHA loaned no new proceeds for the planting of the 1985 and 1986 crops, or for any other allowable purpose provided by the pertinent regulations set forth at 7 C.F.R. § 709.3(a) & (b).

FmHA did release collateral in an unknown amount which the Debtor used for planting the 1985 and 1986 crops. The parties agreed that FmHA had a valid lien in the 1984 and 1985 crops. The

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UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF IOWA

BARBARA A. EVERLY, CLERK

IN RE:

CHAPTER 12  
BANKRUPTCY NO.

KROLL FARMS, A Partnership

L87-00773S

Debtor.  
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KROLL FARMS, A Partnership

ADVERSARY NO.

Plaintiff,

A88-0036S

v.

FARMERS HOME ADMINISTRATION

Defendant.

ORDER Re: Complaint to Determine Secured Status

The matter before the Court is a complaint to determine the validity of a claimed security interest of the Farmers Home Administration in certain government farm program payments. The Court now enters its Findings of Fact, Conclusions of Law and Order. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K).

FINDINGS OF FACT

The parties have submitted this matter to the Court on stipulated facts. Relevant facts necessary to determine the issues before the Court are as follows:

1. The Debtor is indebted to Farmers Home Administration (FmHA) pursuant to three promissory notes, copies of which have

no longer claims a security interest in the PIK certificate. Therefore, that matter is no longer in dispute.

7. The security agreement entered into on August 22, 1985, contains a section for the grant of a security interest in "accounts, contract rights and general intangibles." That section, which is identified as "Item 4" states that a security interest is to be granted in "all accounts, contract rights and general intangibles, as follows:" There is nothing filled in after the colon in Item 4.

8. The security agreement dated September 17, 1986 contains an identical Item 4 as the August 22, 1985, security agreement, except that in the September 17, 1986, security agreement the following language is inserted in Item 4: "1986 ASCS deficiency payments."

#### DISCUSSION AND CONCLUSIONS OF LAW

##### A. 1985 DEFICIENCY PAYMENT

FmHA claims that it has a security interest in the 1985 deficiency payment. FmHA argues that it has a validly perfected lien in crops and crop proceeds and that the deficiency payment in question is a crop proceed. Alternatively, FmHA argues that if it is determined that the deficiency payment is a contract right or general intangible, then the language quoted above from Item 4 is sufficient to grant to FmHA a security interest in the deficiency payments.

The question of whether a farm deficiency payment is a crop proceed or general intangible has now been laid to rest by the Eighth Circuit Court of Appeals. In the case of In re Kingsley, 865 F.2d 975, 981 (8th Cir. 1989), the court held that government deficiency payments that are part of the federal price support program are not proceeds of crops, but rather are contract rights. Therefore, the correct classification of the deficiency payment is as a general intangible under the Uniform Commercial Code. § 554.9106, 1987 Code of Iowa. Accordingly, the claim that FmHA has a valid lien in the 1985 deficiency payment by virtue of the fact that it has properly perfected its lien in crops and crop proceeds must be rejected.

The Court also rejects the argument that the language in Item 4 of the August 22, 1985 security agreement is adequate to perfect a lien in deficiency payments as a contract right. The identical FmHA form was at issue in the case of Matter of Hunerdosse, 85 B.R. 999 (Bankr. S.D. Iowa 1988). The court there held that the "clear meaning of the language used [in the FmHA security agreement] with respect to 'general intangibles' is that a security interest would attach only to those 'general intangibles' specifically listed." Hunerdosse, 85 B.R. at 1005. The Court is persuaded by the reasoning in the Hunerdosse case and finds that the failure to make any reference to government program payments in Item 4 leads to the conclusion that FmHA does not have a validly perfected security interest in the 1985 deficiency payment.

The Court therefore concludes that as to the 1985 deficiency payment, FmHA does not have a valid lien.

B. 1986 DEFICIENCY PAYMENT

The security agreement dated September 17, 1986, granted to FmHA a lien in the 1986 deficiency payments. This Court has previously held that specific reference to the government program payment is sufficient to grant a valid lien to the creditor. See, In re Waters, 90 B.R. 946, 968 (Bankr. N.D. Iowa 1988). The Debtor does not seriously contest the fact that FmHA's security agreements and finance statements cover the deficiency payment in question.

The fighting issue as to the 1986 deficiency payment revolves around the anti-assignment provisions of 16 U.S.C. § 590(h) & (g) and the anti-assignment regulations found at 7 C.F.R. § 709.3.<sup>1</sup>

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<sup>1</sup>7 C.F.R. § 709.3(a) & (b) read as follows:

(a) A payment which may be made to a producer under any program to which this part is applicable may be assigned only as security for cash or advances to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice, for the current crop year. No assignment may be made to secure or pay any preexisting indebtedness or any nature whatsoever.

(b) To finance making a crop means (1) to finance the planting, cultivating, or harvesting of a crop, including the purchase of equipment required therefor and the payment of cash rent for land used therefor, or (2) to provide food, clothing, and other necessities required by the producer or persons dependent upon him.

The Court concludes as to the particular facts of this case that the FmHA has met its burden of showing that an "advance" was made to finance the planting, cultivating or harvesting the Debtor's 1986 crop. The parties have stipulated that at least part of the proceeds from the 1985 crop were placed in the supervised FmHA account under the joint control of the Debtor and FmHA. These are monies which could have been applied to the FmHA debt. Those monies were in fact used, at least in part, to finance the planting, cultivating and harvesting of the 1986 crop. Based on these facts, the Court concludes that the applicable statutory and regulatory mandates have been met.

It should be noted that the practice of the FmHA was designed to meet the needs of the Debtor and to accommodate and expedite the obtaining of credit for the 1986 crop. Had FmHA applied the 1985 crop proceeds to its loan, as it had the right to do, the Debtor would have then been required to take out a new loan in 1986. The process would not only have been time consuming, but also would have been the subject of the exigencies of government regulations which may have been in effect at the time, and possible limits on government funding. By using the supervised joint bank account process, FmHA was protected if the FmHA determined that the Debtor's farm prospects for 1986 were not viable and the money should be paid to the FmHA on the outstanding loan, while at the same time the Debtor had the monies available to plant a crop in the event the Debtor and FmHA could agree upon a farm plan for 1986. Under these facts, the Court believes that

FmHA has met its burden of showing that it "advanced" money for the planting, cultivating and harvesting of the 1986 crop.

In summary, the Court concludes that the applicable security agreement and financing statement granted to FmHA a security interest in the 1986 cash deficiency payment. The Court also concludes that the applicable anti-assignment statute and regulations do not prohibit the granting of the security interest to FmHA.

ORDER

IT IS THEREFORE ORDERED that the 1985 cash deficiency payment in the sum of \$613.42 is held by the Debtor free and clear of any Farmers Home Administration lien or encumbrance.

IT IS FURTHER ORDERED that the 1986 deficiency payment in the sum of \$2,369.85 is held by the Debtor subject to a valid lien of Farmers Home Administration.

IT IS FURTHER ORDERED that pursuant to the stipulation between the Debtor and the Farmers Home Administration, the "PIK certificate" held by the Debtor in the sum of \$2,476.32 is free and clear of any lien or encumbrance of Farmers Home Administration.

ORDERED April 12, 1989

  
MICHAEL J. MELLODY  
Chief Bankruptcy Judge

Copy w/judgment to:  
Jeffrey Poulson,  
Atty for Plaintiff;  
U.S. Attorney for Defendant;  
U.S. Trustee;  
this April 12, 1989

  
Deputy Clerk  
P.O. Box 74890  
Cedar Rapids, IA 52407